

AMENDED IN ASSEMBLY JULY 15, 2015

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 324

**Introduced by Senator Pavley
(Coauthor: Senator Beall)**

(Coauthors: Assembly Members Dodd and Kim)
(Principal coauthors: Assembly Members Irwin and Wilk)

February 23, 2015

An act to add Sections 17140.4 and 23711.4 to the Revenue and Taxation Code, and to add Chapter 15 (commencing with Section 4875) to Division 4.5 of the Welfare and Institutions Code, relating to ~~taxation~~ *taxation, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 324, as amended, Pavley. Income taxation: savings plans: Qualified ABLE Program.

The Personal Income Tax Law and the Corporation Tax Law, in specified conformity with federal income tax laws regarding qualified tuition programs, provide that distributions from a qualified tuition program are generally not included in the income of the donor or the beneficiary, as specified.

Existing federal law, the Stephen Beck Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act), for taxable years beginning on or after January 1, 2015, encourages and assists individuals and families to save private funds for the purpose of supporting persons with disabilities to maintain their health, independence, and quality of life by excluding from gross income distributions used for qualified disability expenses by a beneficiary of a Qualified ABLE Program established and maintained by a state, as specified.

This bill would conform to these federal income tax law provisions relating to the ABLE Act under the Personal Income Tax Law and the Corporation Tax Law, as provided. The bill would also establish in state government a Qualified ABLE Program and the ~~Qualified ABLE Fund~~ for purposes of implementing the federal ABLE ~~act~~. *Act. The bill would create the ABLE Act Board. The bill would authorize the Able Fund to accept moneys from ABLE accounts, to be segregated into the program account and the administrative account. The bill would continuously appropriate funds in the accounts to the board for specified purposes, thereby making an appropriation.* The bill would require the Treasurer to administer the program in compliance with the requirements of the federal ABLE Act.

Vote: majority. Appropriation: ~~no~~-yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17140.4 is added to the Revenue and
2 Taxation Code, to read:
3 17140.4. Section 529A of the Internal Revenue Code, relating
4 to qualified ABLE programs, added by Section 102 of Division B
5 of Public Law 113-295, shall apply, except as otherwise provided.
6 (a) Section 529A of the Internal Revenue Code is modified as
7 follows:
8 (1) By substituting the phrase “under this part and Part 11
9 (commencing with Section 23001)” in lieu of the phrase “under
10 this subtitle.”
11 (2) By substituting “Article 2 (commencing with Section
12 23731)” in lieu of “Section 511.”
13 (b) A copy of the report required to be filed with the Secretary
14 of the Treasury under Section 529A(d) of the Internal Revenue
15 Code, relating to reports, shall be filed with the Franchise Tax
16 Board at the same time and in the same manner as specified in that
17 section.
18 SEC. 2. Section 23711.4 is added to the Revenue and Taxation
19 Code, to read:
20 23711.4. Section 529A of the Internal Revenue Code, relating
21 to qualified ABLE programs, added by Section 102 of Division B
22 of Public Law 113-295, shall apply, except as otherwise provided.

(a) Section 529A of the Internal Revenue Code is modified as follows:

(1) By substituting the phrase “under Part 10 (commencing with Section 17001) and this part” in lieu of the phrase “under this subtitle.”

(2) By substituting “Article 2 (commencing with Section 23731)” in lieu of “Section 511.”

(b) A copy of the report required to be filed with the Secretary of the Treasury under Section 529A(d) of the Internal Revenue Code, relating to reports, shall be filed with the Franchise Tax Board at the same time and in the same manner as specified in that section.

SEC. 3. Chapter 15 (commencing with Section 4875) is added to Division 4.5 of the Welfare and Institutions Code, to read:

CHAPTER 15. QUALIFIED ABLE PROGRAM

4875. For purposes of this chapter:

(a) “ABLE account” or “account” means the account an eligible individual makes contributions to pursuant to this chapter for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account.

(b) “ABLE Fund” or “fund” means the fund established by this chapter for purposes of implementing the federal ABLE ~~act~~ *Act*.

(c) “Designated beneficiary” means the eligible individual who established an ABLE account and is the owner of the account.

(d) “Eligible individual” means an individual who is eligible under the program for a taxable year if during that taxable year all of the following criteria are met:

(1) The individual is entitled to benefits based on blindness or disability under Title II or XVI of the federal Social Security Act, and that blindness or disability occurred before the date on which the individual attained 26 years of age.

(2) A disability certification, as defined in the federal ABLE Act, with respect to the individual is filed pursuant to the requirements set forth in the federal ABLE Act.

(e) “Federal ABLE act” means the federal Stephen Beck Jr., Achieving a Better Life Experience Act of 2014.

(f) “Qualified ABLE Program” or “program” means the program established by this chapter to implement the federal ABLE act pursuant to Section 529A of the Internal Revenue Code.

(g) “Qualified disability expenses” means any expenses related to the eligible individual’s blindness or disability that are made for the benefit of an eligible individual who is the designated beneficiary, including expenses related to education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary of the Treasury under regulations and consistent with the purposes of the federal ABLE Act.

4876. There is hereby created the ABLE Act Board that consists of the Treasurer, the Director of Finance, the Controller, the Director of Developmental Services, the chairperson of the State Council on Developmental Disabilities, the Director of Rehabilitation, and the chair of the State Independent Living Council, or their designees.

~~4876.~~

4877. (a) There is hereby established in state government a Qualified ABLE Program and the ~~Qualified~~ ABLE Fund for purposes of implementing the federal ABLE act pursuant to Section 529A of the Internal Revenue Code.

(b) The Qualified ABLE Program shall be administered by the Treasurer, who shall be responsible to ensure that the program is administered in compliance with the requirements of the federal ABLE Act.

(c) (1) *The ABLE Fund shall accept moneys from all ABLE accounts.*

(2) *The ABLE Act Board shall segregate moneys received by the ABLE Fund into two accounts, which shall be identified as the program account and the administrative account.*

(A) *Notwithstanding Section 13340 of the Government Code, the program account is hereby continuously appropriated, without regard to fiscal years, to the ABLE Act Board for the purposes specified in this act.*

(B) *Notwithstanding Section 13340 of the Government Code, the administrative account is hereby continuously appropriated,*

1 *without regard to fiscal years, to the ABLE Act Board for*
2 *administration of the act. Administrative costs shall not exceed 1*
3 *percent of the incoming funds for the fiscal year.*

4 *(d) Funding for startup and first-year administrative costs shall*
5 *be appropriated from the General Fund in the annual Budget Act.*
6 *The board shall repay, within five years, the amount appropriated,*
7 *plus interest calculated at the rate earned by the Pooled Money*
8 *Investment Account. Necessary administrative costs in future years*
9 *shall be paid out of the administrative fund pursuant to*
10 *subparagraph (B) of paragraph (2) of subdivision (c).*

11 ~~4877.~~

12 4878. Under the program, a person may make contributions
13 for a taxable year, for the benefit of an individual who is an eligible
14 individual for that taxable year, to an ABLE account that is
15 established for the purpose of meeting the qualified disability
16 expenses of the designated beneficiary of the account, if all of the
17 following criteria are met:

18 (a) The designated beneficiary is limited to one ABLE account
19 for purposes of this chapter.

20 (b) The ABLE account is established only for a designated
21 beneficiary who is a resident of this state.

22 ~~4878.~~

23 4879. The Treasurer may adopt regulations to implement this
24 chapter.

25 ~~4879.~~

26 4880. Notwithstanding any other law, moneys—~~in~~ *in,*
27 *contributions to, and any distribution for qualified disability*
28 *expenses from,* an ABLE account, not to exceed one hundred
29 thousand dollars (\$100,000) shall not count toward determining
30 eligibility for the Medi-Cal program pursuant to Chapter 7
31 (commencing with Section 14000) of Part 3 of Division 9.